

TESTIMONY  
OF  
THE HONORABLE ADA E. DEER  
ACTING CHAIR  
NATIONAL INDIAN GAMING COMMISSION  
BEFORE THE  
SUBCOMMITTEE ON INTERIOR  
OF  
THE UNITED STATES SENATE  
APPROPRIATIONS COMMITTEE

APRIL 10, 1997

Mr. Chairman, Members of the Committee, thank you for the opportunity to appear before you today to testify on the fiscal year 1998 Budget Request of the National Indian Gaming Commission. My name is Ada E. Deer, and I am the Acting Chair of the National Indian Gaming Commission (NIGC). The budget submitted to you for Fiscal 1998, pursuant to 25 U.S.C. § 2706 (a) (1), was unanimously approved by the Commission.

Gaming activity has been conducted on Indian lands for close to twenty years. Briefly, it has been almost ten years since Congress passed the Indian Gaming Regulatory Act (IGRA) that created the NIGC and there has been an immense change in the industry during that time period. In just the past five years Indian gaming activity and revenues have more than doubled. During that same time period the funding and the staff of the NIGC have remained relatively constant.

The mission of the NIGC, in keeping with the declaration of policy of the IGRA, is to ensure that Indian gaming is regulated, "to shield it from organized crime and other corrupting influences, to ensure that the Indian tribe is the primary beneficiary of the gaming operation and to assure that gaming is conducted fairly and honestly by both the operator and the player."

Currently, the NIGC is responsible for monitoring and regulating gaming in 273 tribal gaming establishments operated by 183 tribes in 28 states. Tribal governments share in the responsibility for the day-to-day regulation of class II gaming, while many aspects of the regulation of class III gaming are controlled by tribal/state compacts.

The 33 person staff of the NIGC is responsible for: 1) monitoring gaming operations on a continuing basis; 2) approving all contracts for the management of gaming operations by non-tribal parties; 3) conducting background investigations on individuals and entities with a financial interest in, or management responsibility for, a class II or a combined class II/III gaming management contract; 4) approving all gaming related tribal ordinances; 5) reviewing background investigations of key gaming employees conducted by the tribes; 6) reviewing and conducting audits of the books and records of the gaming operations; and 7) initiating enforcement actions to help ensure the integrity of Indian gaming operations.

In FY 1997, the NIGC is undertaking this regulatory responsibility with an operating budget of \$4.4 million comprised of a \$1,000,000 direct appropriation, \$1,500,000 in fees assessed on class II tribal gaming revenue, investigative fees and unobligated funds from prior years. It is expected that these prior year funds will be

nearly depleted at the conclusion of fiscal year 1997, leaving the NIGC with anticipated revenue of between \$2.5 and \$3 million in fiscal year 1998.

To adequately meet its responsibilities under the IGRA, the NIGC needs additional funds that should be obtained through additional user fees rather than through additional appropriations. For the last two years, the NIGC has assessed class II tribal gaming at a rate of 0.5 percent of gross revenue. The IGRA permits assessments under a two-tier scheme with rates ranging from zero to 5 percent. However, there is a \$1,500,000 statutory limitation on the amount of fees the NIGC can assess annually on tribal gaming gross revenue. Raising or eliminating the statutory cap would permit the NIGC to assess fees at a rate, in keeping with the IGRA, that would generate additional agency operating funds.

Assessing fees on class III gaming is another potential source of funds for the NIGC. Currently, the NIGC is permitted to assess fees only on class II gaming revenue even though many of our enforcement actions involve class III facilities. Being permitted to assess fees on class III gaming revenue would help defray the expense of enforcing and litigating class III aspects of the IGRA.

The NIGC is working with the Administration on legislation to submit to Congress that incorporates both of these concepts. Given the scope of the responsibilities of the NIGC, as well as the growth of the Indian gaming industry, now is the time to ensure that the NIGC has sufficient funds to fulfill its statutory responsibilities.

## **COMPLIANCE WITH IGRA**

In the Conference Report to H.R. 3019, the Appropriations for Fiscal Year 1996, the NIGC was instructed to submit a report to the Secretary of the Interior:

detailing those Indian tribes or tribal organizations with gaming operations that are in full compliance, partial compliance, or non compliance with the provisions of the Indian Gaming Regulatory Act (25 U.S.C. 2701 et seq.)

The first report, documenting compliance as of September 30, 1996, was sent to the Secretary in November 1996. It covered the major compliance obligations for gaming tribes, including: 1) obtaining a tribal-state compact approved by the Secretary of the Interior (DOI) prior to conducting class III gaming; 2) submitting investigative reports and suitability determinations on each key employee and primary management official

summarizing the results of the tribal background investigation; 3) submitting finger print cards to the NIGC for processing; 4) submitting gaming employee applications to the NIGC at the commencement of employment; 5) adopting a gaming ordinance that has been approved by the NIGC; 6) paying a fee assessment to the NIGC based on class II revenues; 7) issuing a separate license for each facility where gaming is conducted; and 8) submitting an annual independent audit of the gaming operation to the NIGC. Few tribes were in compliance with all of the items covered in the report; however, the report showed that each of the eight categories had a compliance rate of at least 50 percent.

The NIGC is committed to 100 percent compliance with the IGRA. Due to limited resources, voluntary compliance with the IGRA has been emphasized by the NIGC. This emphasis and agency outreach efforts were increased after the first report. Those efforts utilized the majority of NIGC enforcement resources and included letters and telephone calls to each tribe as well as on site visits where possible. In addition, the NIGC held a compliance workshop in January to outline compliance procedures. More than three hundred representatives of seventy tribes were in attendance. At that workshop, it was announced that any tribe not in compliance as of March 31, 1997 would be subject to enforcement action unless they had executed a memorandum of understanding (MOU) with the NIGC to come into compliance by an agreed upon date. Depending on the severity of the violation, NIGC enforcement action for non compliance could be the issuance of a closure order or a civil fine of up to \$25,000 a day for each violation by a tribe.

In late March, the NIGC released the results of the report for the period ending December 31, 1996. Although there was substantial improvement in certain categories, especially those involving background investigations, the level of total compliance was still low. It is our hope that the next report, which will be as of March 31, 1997, will show that more than 50 percent of operations are in total compliance with the IGRA.

## **ENFORCEMENT**

From 1991 to 1996, the NIGC issued eight formal enforcement documents. Since the beginning of 1996, when the NIGC underwent a reorganization, the NIGC has opened 30 new enforcement cases and issued eight Notices of Violation. These cases address a wide range of violations including: tribes that have failed to perform background investigations on key employees, tribes that are operating without an approved ordinance, operations engaged in illegal pull tab sales, operations which are not licensed by the tribe, tribes conducting class III gaming without a compact with the

state, operations being managed by contractors whose agreements have not been approved, and operations maintained in a manner that could threaten the health and safety of the public.

In addition to these formal enforcement actions, the NIGC also worked with tribes to resolve a number of disputes that threatened the financial integrity of the gaming operations. These included disputes between the tribe and its management contractor as well as disputes between rival factions within a tribe.

To date, the NIGC has imposed \$2,950,000 in civil fines and assessments. These fines are deposited in the general fund of the U.S. Treasury, or in special circumstances, are payments from management contractors to the tribes.

The NIGC expects a further acceleration of its enforcement program during the next six months. The NIGC will continue to give enforcement priority to cases involving individuals and companies managing tribal gaming operations without an approved management contract and will continue to investigate and take action against gaming operations offering class III gaming without approved tribal-state compacts.

## **REORGANIZATION AND MANAGEMENT CONTROLS**

During the last year the NIGC has undergone a number of changes. In 1996, the staff structure was reorganized to better address enforcement actions. Early in fiscal year 1997, a budget and management review process was implemented that resulted in changes to internal processes and procedures, and the Office of General Counsel also streamlined legal review processes. As a result of these actions, the NIGC reduced the time required to complete background investigations to less than six months, reduced the time for the final legal review of contracts to less than a month, reduced the backlog of contracts under review, and increased the number of finger print cards processed to sixteen hundred a month.

Within the last few months, the NIGC has implemented personnel, internal management and travel procedures in keeping with applicable federal law and regulations. A complete analysis of the fee assessment program has begun in order to develop a plan of action regarding the overpayment of class II fees. The NIGC has worked with the Office of Fiscal Services at DOI to ensure the proper accounting of assets and liabilities and to develop a procedure to begin billing for background investigations. In addition, the amount of deposit required for management background investigations has been analyzed, an analysis of the billing rate for finger print cards

has begun, and a more substantive review of the audits submitted by the tribes has been implemented.

With each of these actions, it has become increasingly apparent that the NIGC needs additional funds to fulfill its mandate to enforce the IGRA. It is my hope that you will support our fiscal year 1998 budget request of \$1,000,000 and our legislative efforts to lift or eliminate the statutory cap on fees and to include class III gaming revenue in the fee assessment structure. I believe that, with the increased funds our legislative initiatives will raise, the next Chair of the NIGC will be able to expand the enforcement of the Indian Gaming Regulatory Act to better accomplish the Agency's regulatory mission.

Thank you for the opportunity to testify on behalf of the NIGC.



**NATIONAL  
INDIAN  
GAMING  
COMMISSION**

**ASSISTANT SECRETARY - INDIAN AFFAIRS  
ACTING CHAIR - NATIONAL INDIAN GAMING COMMISSION  
ADA E. DEER -- Biography**

Ada E. Deer is a member of the Menominee Indian Tribe of Wisconsin. Ms. Deer was nominated by President Clinton on May 11, 1993 to be Assistant Secretary of Indian Affairs and confirmed by the United States Senate on July 16, 1993. On January 31, 1997, she was selected by President Clinton to be the Acting Chair of the National Indian Gaming Commission (NIGC).

She is the first woman to hold the position of Chair of the National Indian Gaming Commission. Her appointment, which was done under the Vacancy Act, will be for 120 days from the date of the appointment. Ms. Deer has indicated she does not wish to be the nominee for the position of Chair of the NIGC.



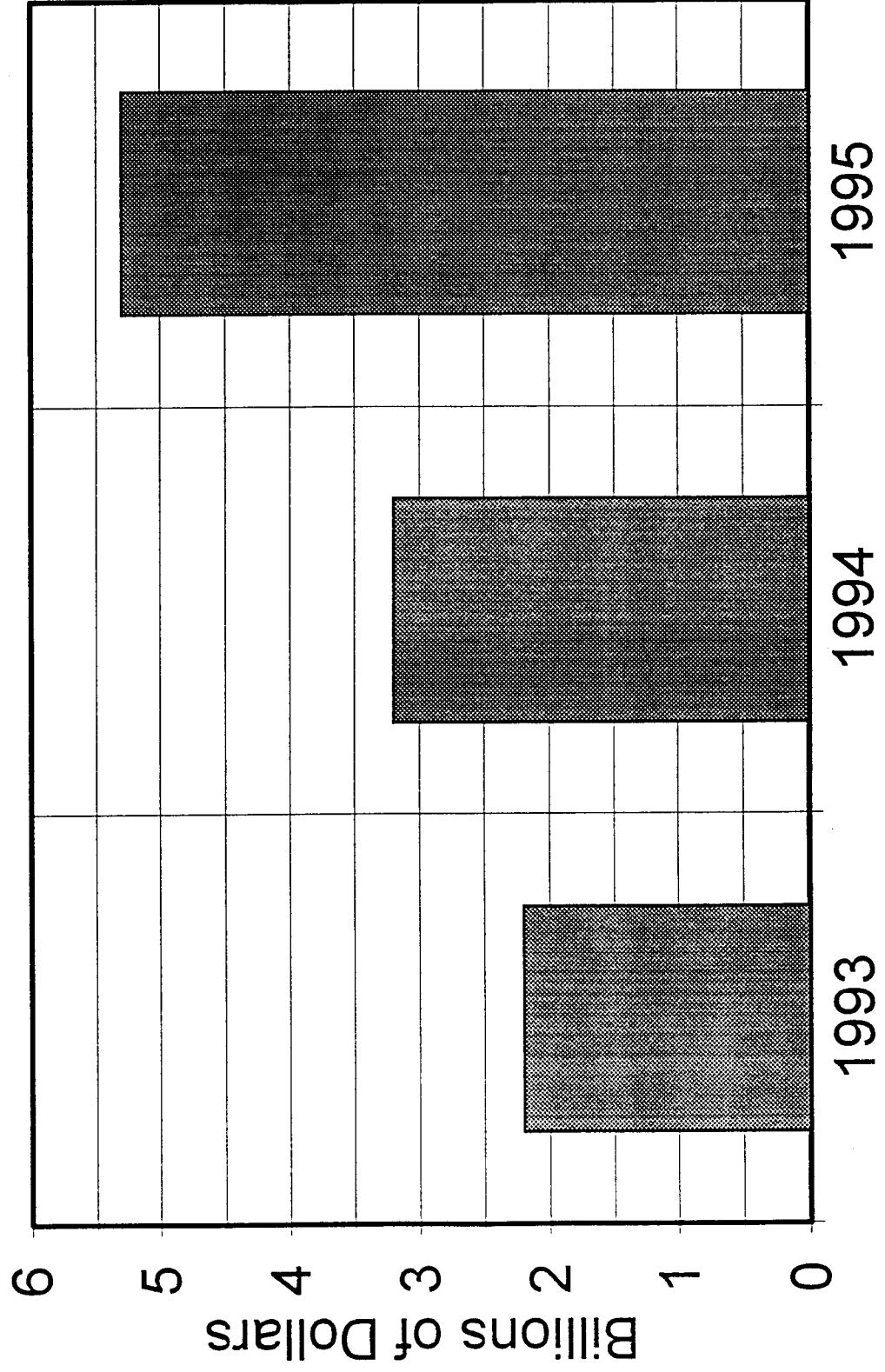
# NATIONAL INDIAN GAMING COMMISSION

## CHARTS



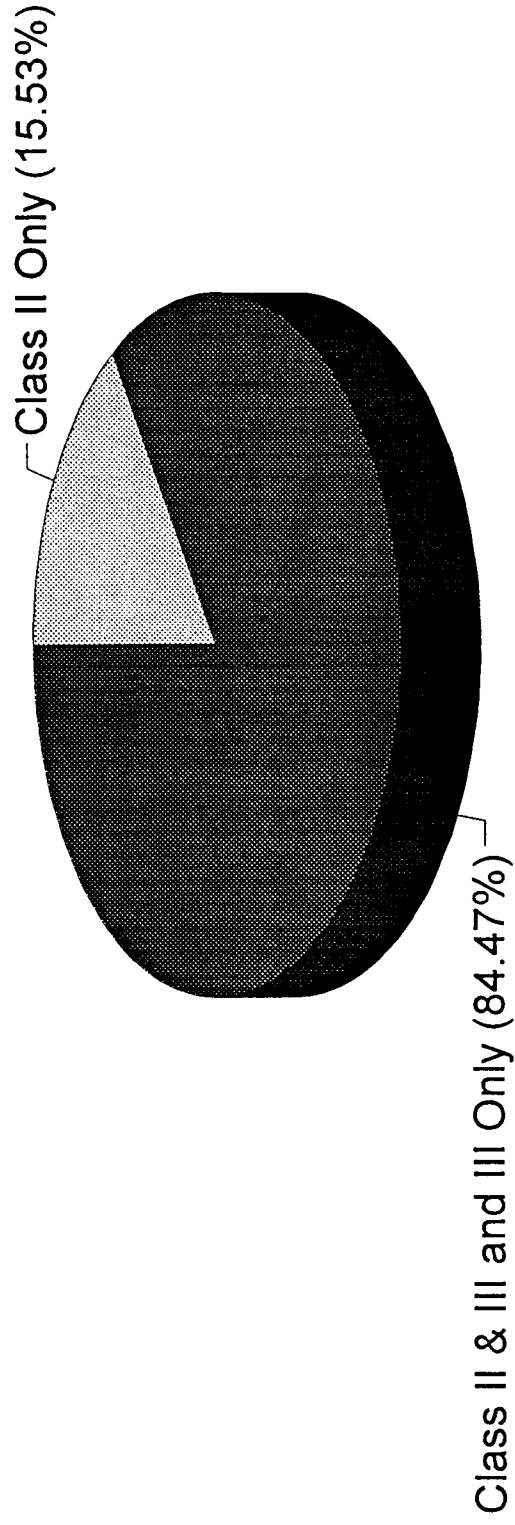
# Indian Gaming Operations Revenues

Based on Fiscal Year



# Approved Ordinances

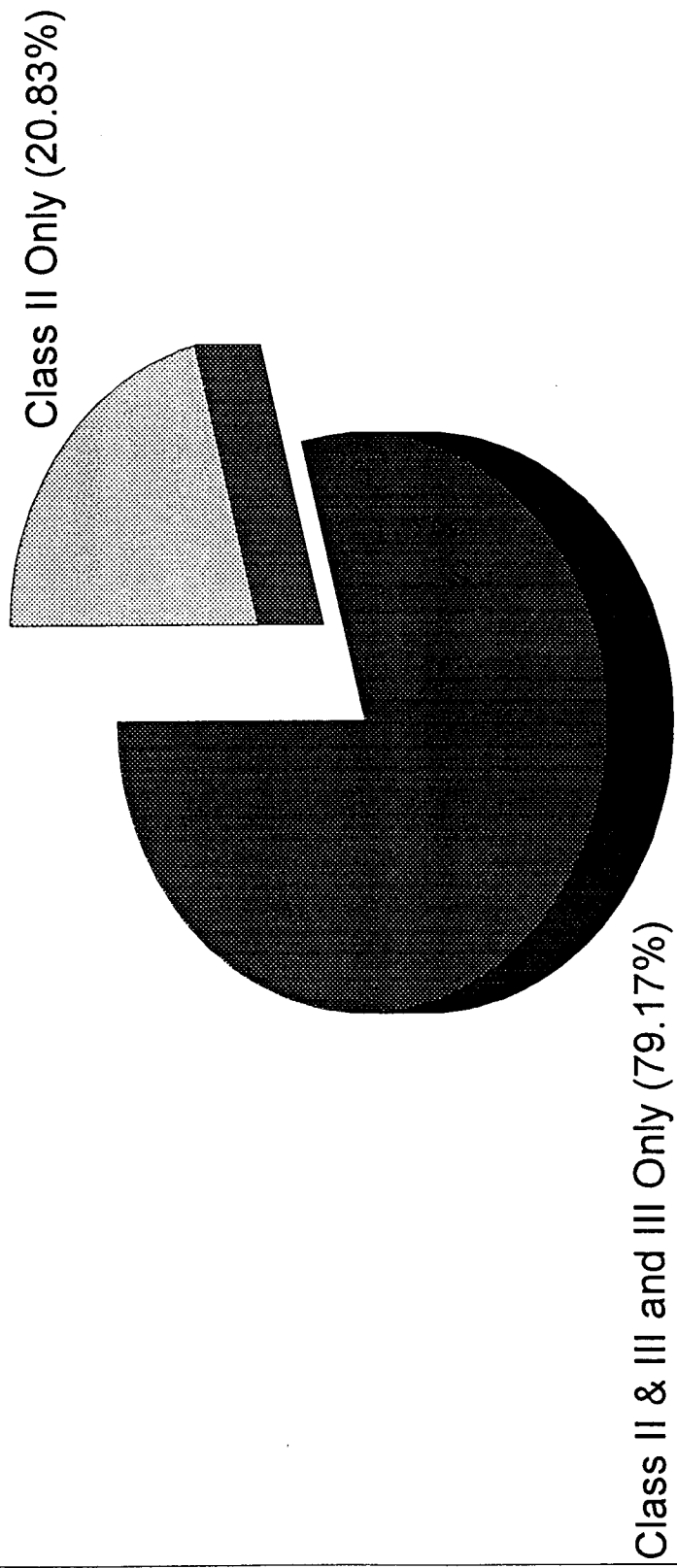
By Type of Gaming



Class II & III and III Only	185
Class II Only	34

# Approved Gaming Management Contracts

By Type of Gaming

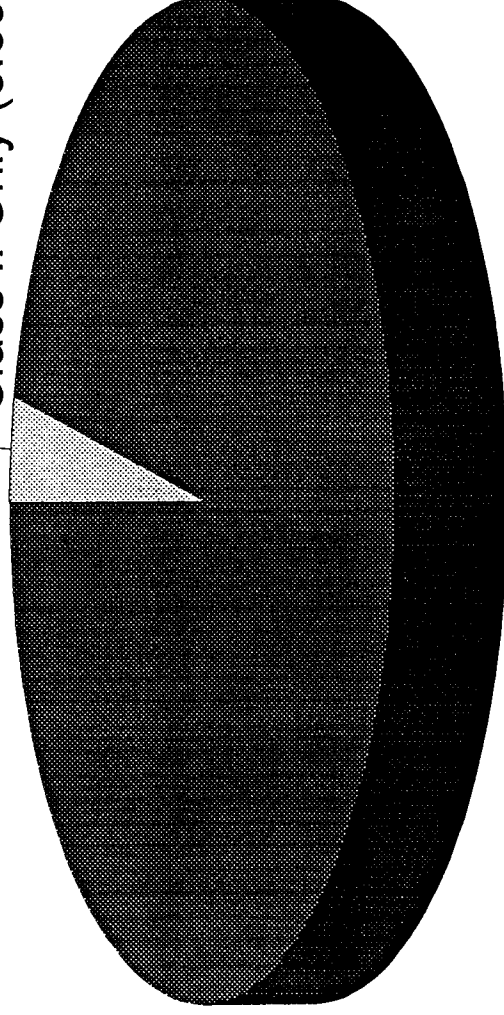


Class II & III and III Only	19
Class II Only	5

# Enforcement Actions\*

By Type of Gaming

Class II Only (3.33%)



Class II & III and III Only (96.67%)

Class II & III and III Only	29
Class II Only	1

\* Since NIGC Reorganization in 1996